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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,913	02/24/2004	Gian Franco Bernabei	080004-0179	1969
22428	7590	08/24/2005	EXAMINER	
FOLEY AND LARDNER SUITE 500 3000 K STREET NW WASHINGTON, DC 20007			PATEL, JOY	
			ART UNIT	PAPER NUMBER
			3762	

DATE MAILED: 08/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SM

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/784,913	BERNABEI, GIAN FRANCO	
	<b>Examiner</b>	<b>Art Unit</b>	
	Joy P. Patel	3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-29 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____  | 6) <input type="checkbox"/> Other: ____                                     |

## **DETAILED ACTION**

### ***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-7, 28, and 29, drawn to a method for providing a substance to be absorbed onto a surface of a patient's skin through the implementation of a probe head that provides bursts of electrical pulses and vibrations to the skin, is classified in class 601, subclass 17.
- II. Claims 8-20, drawn to a treatment for enhancing absorption of substances provided on a skin surface of a patient involving dermabrasion followed by treatments with electrical impulses and vibrations, is classified in class 604, subclass 22.
- III. Claims 21-25, drawn to a method for reducing the cellulite on skin involving dermabrasion, heating of the skin, applying mechanical and electrical pulses to the skin, are classified in class 607, subclass 2.
- IV. Claims 26 and 27, drawn to providing a substance to be absorbed onto a surface of a patient's skin involves fitting an attachment device to a probe head that has electrodes provided and is capable of mechanically vibrating, followed by applying the drug to the surface of a patient's skin by implementing either the probe's electrical pulses or its mechanical vibrations, are classified in class 607, subclass 114.

Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as it can be used in absorption treatments that do not require dermabrasion.

Furthermore, invention II can use the same probe head of invention I in order to apply the necessary electrical pulses and mechanical vibrations. See MPEP § 806.05(d).

Inventions I and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as being able to be used with other techniques that do not require dermabrasion and heating of the skin. Furthermore, invention III can be performed by implementing the probe head of invention I. See MPEP § 806.05(d).

Inventions I and IV are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as teaching what frequency rates the electrical pulses should be applied to the skin. Invention IV can be used with invention I because invention IV discloses how to assemble the probe head of invention I. See MPEP § 806.05(d).

Inventions II and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention II has separate utility such

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as being able to be implemented in applications where only dermabrasion is required, but heating of the skin is not. See MPEP § 806.05(d).

Inventions II and IV are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention II has separate utility such as being able to be used to aid in enhancing absorption of substances on a skin surface of a patient through the use of dermabrasion, electrical impulses, and mechanical vibrations. Invention II also provides the frequencies and voltages at which the electrical impulses have to be applied, along with the frequencies at which the mechanical vibrations have to be applied. Furthermore, the probe head assembly of invention IV can be used to facilitate the electrical impulses and mechanical vibrations that are necessary for invention II. See MPEP § 806.05(d).

Inventions III and IV are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention III has separate utility such as being implemented to reduce cellulite on the skin. Invention II also discloses that heat must be applied in this process through either the use of a lamp or a radio frequency signal. Furthermore, the probe assembly of invention IV can be used to facilitate the necessary mechanical vibrations and electrical pulses necessary for the method of invention II. See MPEP § 806.05(d).

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Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

The inventions are distinct, each from the other because of the following reasons:

A telephone call was made to Mr. Brian J. McNamara on August 15, 2005 to request an oral election to the above restriction requirement, but did not result in an election being made.


Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joy P. Patel whose telephone number is 571-272-5556. The examiner can normally be reached on M-F 8:30-5.

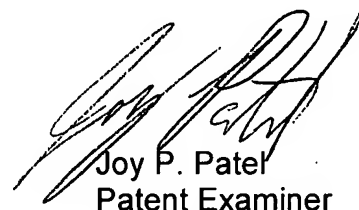
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571)-272-6996. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Robert E. Pezzuto  
Supervisory Patent Examiner  
Art Unit 3762



Joy P. Patel  
Patent Examiner  
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